JD–11–06
Milwaukee, WI

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

TOWER AUTOMOTIVE PRODUCTS
COMPANY, INC.

and

Cases 30–CA–16981
30–CA–17153

SMITH STEEL WORKERS, directly
affiliated LOCAL UNION 19806, AFL–CIO

Ryan E. Connolly, Esq., for the General Counsel.
Richard A. Hooker, Esq. (Varnum, Riddering, Schmidt, Howlett LLP), of Novi, Michigan, for the Respondent.
Marianne Goldstein Robbins, Esq. (Previant, Goldberg, Uelman, Gratz, Miller & Brueggeman, S.C.), of Milwaukee, Wisconsin, for the Charging Party.

DECISION

STATEMENT OF THE CASE

JOHN T. CLARK, Administrative Law Judge. This case was tried in Milwaukee, Wisconsin, on September 26–27, 2005. The matter arose as follows. On August 31 and October 29, 2004, the Smith Steel Workers, directly affiliated Local Union 19806, AFL–CIO (the Union or the Charging Party) filed a charge and an amended charge in Case 30–CA–16981 against Tower Automotive Products Company, Inc. (the Respondent). On February 3, 2005, the Acting Regional Director for Region 30, National Labor Relations Board (the Board) approved an informal settlement agreement between the Respondent and the Union disposing of all issues raised by the charge and amended charge in Case 30–CA–16981. On April 11 and 15, 2005, the Union filed another charge and amended charge against the Respondent in Case 30–CA–17153. On June 28, 2005, the Acting Regional Director, issued an order revoking approval of the settlement agreement, consolidating cases, consolidated amended complaint and notice of hearing regarding Cases 30–CA–16981 and 30–CA–17153.

The complaint alleges and the answer denies that the Respondent violated Section 8(a)(1) and (5) of the National Labor Relations Act (the Act) by bargaining in bad faith with the Union by refusing to bargain over the effects of the cessation of Dodge Ram frame manufacturing in Milwaukee, and over the effects of eliminating a unit position. The complaint also alleges that on February 13, 2004, and March 28, 2005, the Respondent failed to furnish, and failed to furnish in a timely manner, information requested by the Union necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit. The General Counsel also seeks, as part of the remedy for the alleged unfair labor practices, that the Respondent make whole the unit in the manner set forth in *Transmarine Navigation Corp.,* 170 NLRB 389 (1968).

On the entire record, including my observation of the demeanor of the witnesses, my credibility determinations based on the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences drawn from the record as a whole and, after considering the briefs filed by counsel for the General Counsel and the Respondent, I make the following

Findings of Fact

I. Jurisdiction

The Respondent, a Wisconsin corporation, with an office and place of business located in Milwaukee, Wisconsin, was engaged in the manufacture of engineered body structure components and assemblies for the automotive industry. During the calendar year ending December 31, 2004, the Respondent in the conduct of its business operations purchased and received at its Milwaukee, Wisconsin facility, goods and materials valued in excess of $50,000 directly from suppliers located outside the State of Wisconsin. The Respondent admits and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. Background

The Respondent's headquarters are in Novi, Michigan. The Respondent purchased the Milwaukee facility from the A.O. Smith Automotive Products Company in 1997. The Milwaukee facility has made body frames for the automotive industry for almost 100 years. During the relevant period the Milwaukee facility manufactured Dodge Ram truck frames for DaimlerChrysler and Ranger truck frames for Ford.

At all times since about 1934, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Respondent's (and its predecessor, A.O. Smith Corporation) employees. The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All production, maintenance, and office employees, including foremen helpers, but excluding all employees working in the general administrative offices of the Corporation [Respondent], all employees working in the Personnel Departments, senior and junior buyers, senior and junior accountants, purchase follow-up, chief telephone switchboard operator, division managers and their secretaries, salesmen, sales service specialists, sales trainees, foremen and supervisors as defined in the Act, and excluding all employees under the jurisdiction of the following bargaining units: Cafeteria Workers; Local 150 Service Employees International Union AFL–CIO, CLC; United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local Union 601; International Brotherhood of Electrical Workers, Local Number 663; Technical Engineers Association; Milwaukee and Southern Wisconsin District Council of Carpenters, AFL–CIO; and International Association of Machinists and Aerospace Workers, District No.10.

In addition to the Charging Party Union representing the production and maintenance employees at the Milwaukee facility, six other "craft unions" represent employees outside the production and maintenance unit.

Since the mid-1930s the Union has been a party (with A.O. Smith or the Respondent) to successive collective-bargaining agreements, the most recent of which is effective from August 1, 2003 through August 1, 2009. Before the most recent collective-bargaining agreement the Charging Party Union and one other union were the only unions at the Milwaukee facility without a severance provision in their collective-bargaining agreements with the Respondent. On August 15, 2003, the Respondent submitted a severance proposal to the unions. The Charging Party Union rejected the proposal and countered with a proposal to use the monies designated for the severance package to improve the pension plan. The Respondent agreed, thereby leaving the Charging Party Union as the only union without a severance benefits provision in its collective-bargaining agreement with the Respondent. The 2003–2009 collective-bargaining agreement between the Respondent and the Charging Party Union also did not contain a no-strike provision.

In early February 2004, DaimlerChrysler told the Respondent that beginning in mid-2005 it would no longer be making the Dodge Ram truck frames. DaimlerChrysler informed the Respondent that it had awarded that work to the Respondent's joint venture partner, Metalsa S. de R.L., of Monterrey, Mexico. Shortly after it received the foregoing information, the Respondent passed it on to the employees at the Milwaukee facility.

In response to the announcement, Duane McConville, then union president, sent Susan Danielson a letter, dated February 13, 2004. Danielson was the "Human Resources Leader–Milwaukee Site", in essence McConville's management counterpart. Danielson was not employed by the Respondent at the time of the hearing, and did not testify. The stated purpose of the letter was a request for information that would help the Union to "evaluate the announcement in terms of the parties' rights and responsibilities under our Collective Bargaining Agreement and [F]ederal law" (GC Exh.1(i) Exh. A). This information request, along with a refusal to bargain over effects allegation, is the basis for the charge in case 30–CA–16981. That charge is the subject of the settlement agreement signed by the parties and approved by the Acting Regional Director on February 3, 2005.

It is well established that "a settlement agreement may be set aside and unfair labor practices found based on presettlement conduct if there has been a failure to comply with the provisions of the settlement agreement or if postsettlement unfair labor practices are committed." *Nations Rent, Inc.,* 339 NLRB 830, 831 (2003) (citations omitted). A finding of a substantial postsettlement unfair labor practice is a prerequisite to a finding that the Regional Director properly set aside the settlement agreement and to a consideration of presettlement unfair labor practices. E.g., *Oster Specialty Products,* 315 NLRB 67, 70 (1994); *Interstate Paper Supply,* 251 NLRB 1423, 1424 fn. 9 (1980); *Porto Mills,* 149 NLRB 1454, 1470 (1964).

B. Alleged Postsettlement Violations

The complaint in Case 30–CA–17153 alleges that the Respondent failed and refused to bargain in good faith over the effects of the cessation of the Dodge Ram frame manufacturing, since February 21, 2005.

The complaint further alleges that since February 21, 2005, the Respondent has failed and refused to bargain in good faith over the effects of its decision to eliminate a G-444 semidriver position from the unit.

The complaint also alleges that since April 7, 2005, the Respondent has failed and refused to furnish the Union with information necessary for, and relevant to the Union's

performance of its duties as the exclusive collective-bargaining representative of the unit, or has failed to completely respond to the Union's information requests.

1. The G-444 position

In support of this allegation counsel for the General Counsel presented Union President Donald Schrauth. Schrauth appeared to be a credible witness. He testified that G-444 is the labor classification for the over-the-road semitruckdriver classification. The classification is a unit position listed in the collective-bargaining agreement. Schrauth stated that on January 6, 2005, Danielson informed him that the Respondent planned to eliminate a G-444 truckdriver position. This decision was based on a study by the Respondent. Schrauth challenged the study, contending that it had not been conducted as required by the collective-bargaining agreement. Danielson agreed to wait until February 14 to allow the parties to perform a study as required by the collective-bargaining agreement. Schrauth also testified, without contradiction, that he announced that if the Respondent did eliminate one G-444 position, the Union wanted to engage in effects bargaining for the entire classification. Although another study was never conducted the Union reiterated its request for effects bargaining for the entire G-444 classification in a letter to Danielson dated February 14, 2005 (GC Exh. 28), verbally on February 21, and in writing on February 22.

The Respondent eliminated one G-444 position on February 28, 2005. On March 8, Schrauth, speaking directly to Danielson, once again requested effects bargaining. According to Schrauth's uncontradicted testimony Danielson replied that she was "not authorized to enter into effects bargaining at that time" (Tr. 100). Schrauth followed up on this request with another written request to Danielson on March 16. The parties appear to be in agreement that the Respondent did not respond to the letter and that there has no bargaining over the effects of the elimination of a G-444 position on February 28, 2005.

a. Analysis and conclusion

First National Maintenance Corp. v. NLRB, 452 U.S. 666, 679–682 (1981), established the principle that an employer who has a duty to bargain with its union over mandatory subjects of bargaining, must also bargain about the "effects" on employees of a management decision that is not itself subject to the bargaining obligation. Notwithstanding the Union's numerous specific requests for effects bargaining regarding the elimination of the G-444 position, the Respondent was not forthcoming. Indeed, the last request, made by letter dated March 16, 2005, from Schrauth to Danielson, did not even warrant an answer from the Respondent. The failure to answer the Union's request in and of itself, is a clear refusal to bargain.

The Respondent argues, in essence, that because it rejected the two Union "proposals," it has "fulfilled its obligation to bargain." It submits that because Danielson made clear to Schrauth that if the Respondent ever bargained about the effects it would do so only with regard to the incumbent in the eliminated G-444 position and not, contrary to the Union's position, over the effects on the entire classification, the Respondent had satisfied its duty to bargain. The duty to bargain over effects is a duty to bargain "in a meaningful manner and at a meaningful time." *First National Maintenance,* supra at 682. Danielson's succinct pronouncement to Schrauth, followed by repeated requests by the Union for effects bargaining, is not a substitute for bargaining in a "meaningful manner." Equally unpersuasive is the Respondent's contention that because it allegedly lacked the financial wherewithal to offer severance payments to the terminated employees, a contention that it had previously stated to the Union, that it had addressed the Union's only real proposal, and was thus relieved of its duty to bargain. The Union never agreed to forego effects bargaining until the Respondent determined if money was

available for severance payments. Moreover severance payments, are but one of many issues encompassed in effects bargaining, along with pension benefits, preferential hiring lists, health insurance, letters of reference and retraining funds, to identify a few. See e.g., *Los Angeles Soap Co.,* 300 NLRB 289 (1991). None of these other issues were discussed by the parties because of the Respondent's failure and refusal to engage in effects bargaining concerning the elimination of the G-444 classification.

Accordingly, I find as alleged in the complaint that the Respondent by failing and refusing to bargain collectively over the effects of the elimination of a unit position, specifically the G-444 semidriver position has violated Section 8(a)(5) and (1) of the Act.

2. The 2005 information request

On March 28, 2005, Schrauth sent a second information request to Danielson specifically requesting information relevant to effects bargaining concerning the removal of the Dodge RAM frame line [GC Exh. 1(i) Exh. C]. The previous request for information regarding the effects of this decision is the subject of the February 3, 2005 settlement agreement between the parties, and thus, at this stage, may only be considered as background. The March 28, 2005 letter requested (1) a list of the employees who would be impacted by the removal of the Dodge RAM frame line, and the date of the impact, (2) efforts by the Respondent to bring work into the Milwaukee facility, (3) all communication between the Respondent and DaimlerChrysler concerning the removal of the work, and (4) a complete list of the Respondent's claims for damages against DaimlerChrysler. This last item was predicated on rumors circulating in the plant that DaimlerChrysler, as part of a settlement agreement between it and the Respondent, had agreed to pay an unknown amount of money to the Respondent for employee severance payments. The Respondent's announced position had always been that its refusal to discuss severance benefits was based on "a simple inability to afford them" (R. Br. 26). At the end of the letter Schrauth noted that "time is of the essence" because the Union needed the information for the previously scheduled bargaining sessions. On March 30, Schrauth again contacted Danielson regarding his request and advised her that he expected the information by April 4.

Danielson's reply letter, dated April 7, 2005, stated that the Respondent would give the Union a list of employees receiving "WARN Act" notices, that the list would provide the names of the employees impacted by the closing of the RAM frame line, and that the closing would occur around July 2005. The letter also stated that the Respondent had not obtained replacement work. Regarding communications between the Respondent and DaimlerChrysler, and the list of the Respondent's claims for damages against DaimlerChrysler, the Respondent stated that the documentation was located at the Respondent's headquarters in Novi, Michigan, and would require additional time to respond. The letter concluded by stating that the Respondent anticipated responding to these requests during the week of April 18.

Not satisfied with the Respondent's partial response, the Union filed a second unfair labor practice charge on April 11, 2005, Case 30–CA–17153. On April 25, Schrauth again reminded Danielson that the Union had not received a complete response. On April 28, the Respondent's counsel, Richard Hooker, responded to the Union's information request of March 28. Attorney Hooker apparently submitted the response because Danielson left the Respondent's employ at the end of April. The response admitted the existence of a settlement agreement between the Respondent and DaimlerChrysler but only provided documents relating to the Respondent's claims regarding "unamortized capital." Those documents were only offered contingent on the Union executing a confidentiality agreement. Notwithstanding its insistence on the confidentiality agreement the Respondent refused to provide the settlement

agreement itself, because the Respondent and DaimlerChrysler considered that agreement, "strictly confidential." (GC Exh. 15). After returning the executed confidentiality agreement Schrauth received and reviewed the documents on April 29. On the same day, after completion of his review, Schrauth wrote to Hooker. He again asked that the Respondent provide the Union with a list of the damages submitted by the Respondent to DaimlerChrysler, specifically including any amount claimed for labor costs or costs associated with the dissolution of the labor force at the facility.

Attorney Hooker responded by letter on May 2, stating that although it was his understanding that the Respondent had made no claim for labor costs, he would confirm this and, if necessary, supplement the previous information. The following day the Union's attorney, Marianne Goldstein Robbins, wrote to Hooker. Attorney Robbins insisted, based on the executed confidentiality agreement, that the Respondent provide the Union with a copy of the settlement agreement. She specifically referenced rumors in the facility the Respondent had received funds from DaimlerChrysler for the purpose of providing severance payments to the employees at the facility. She opined that Hooker's letter to Schrauth did not foreclose this possibility, because it claimed lack of knowledge, as well as reserving the right to revise. (GC Exh. 18)

On May 4, Attorney Hooker replied that he had received assurances from the Respondent's representatives that the Respondent had provided the Union with "everything they could find in their paper and electronic files." Although he continued to refuse to provide a copy of the settlement agreement, he wrote that "we can assure you there is no truth to any of the rumors you reference. The settlement commitments made by [DaimlerChrysler] do not in any way relate to [the Respondent's] labor costs or severance monies for [the Respondent's employees]." Robbins found that the Respondent's refusal to provide the settlement agreement, in light of the Union's previously executed confidentiality agreement, was unacceptable. (GC Exhs. 19–20.)

It was not until May 18, that the Respondent, through its counsel, acknowledged that as part of its claims for reimbursement presented to DaimlerChrysler, there was a claim for a "Milwaukee Severance Cost." Notwithstanding this admission the Respondent still refused to provide the settlement agreement to the Union. Indeed, although the Respondent was adamant that the Union execute a confidentiality agreement, it redacted the actual settlement amount from the document that it gave the Union. In so doing, the Respondent continued to argue that the settlement was for only a fraction of the Respondent's total claim, and that the settlement did not specify any moneys for "Milwaukee Severance Cost" or any other Milwaukee labor cost. The document provided by the Respondent clearly states a claim in excess of $16 million for "Milwaukee Severance Cost" (GC Exh. 21 at 2).

It was not until June 14, 2005, that the Respondent finally agreed to permit the Union to review the settlement agreement (GC Exh. 22). Also on that date the Respondent provided the communications between itself and DaimlerChrysler that the Union requested in March (GC Exh. 31).

a. Analysis and conclusion

An employer is obligated to provide a union with information that the union requested and that is relevant and necessary for the union to fulfill its role as the collective-bargaining representative of the unit employees. *NLRB v. Acme Industrial Co.,* 385 U.S. 432 (1967). This duty to provide information includes information relevant to negotiations. *Leland Stanford Junior University,* 262 NLRB 136, 138 (1982), enfd. 715 F.2d 473 (9th Cir. 1983). Where the

requested information involves matters outside the bargaining unit a union bears the burden of establishing the relevancy of and necessity for the information. *NLRB v. George Koch Sons, Inc.,* 950 F.2d 1324, 1331 (7th Cir. 1991) enfg. 295 NLRB 695 (1989). The standard for determining whether the information is relevant to the union's bargaining responsibilities "is a liberal one, much akin to that applied in discovery proceedings." *Local 13, Detroit Newspaper Printing & Graphic Communications Union v. NLRB,* 598 F.2d 267, 271 (D.C. Cir. 1979). Thus, the union's burden is not a heavy one, requiring only a showing of a "probability that the desired information is relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities." *Public Service & Electric Gas Co.,* 323 NLRB 1182, 1186 (1997), quoting *Acme Industrial Co.,* above at 437. The employer's obligation includes the duty to supply the information in a timely fashion or to adequately explain why the information was not furnished. *Beverly California Corp.,* 326 NLRB 153, 157 (1998). An unreasonable delay in furnishing the information is as much a violation of Section 8(a)(5) of the Act as is a refusal to furnish the information. *Valley Inventory Service,* 295 NLRB 1163, 1166 (1989). In *River Oak Center for Children, Inc.,* 345 NLRB No. 113 , slip op. at 2 (2005), the Board reaffirmed that:

> Blanket claims of confidentiality in response to requests for relevant information are disfavored. In analyzing the lawfulness of requests for relevant, but assertedly private or confidential information, the Board balances the union's need for the information against any "legitimate and substantial" confidentiality interests. The party asserting privacy or confidentiality has the burden of proof, as well as a duty to seek an accommodation. (Footnotes omitted.)

To the extent that the Respondent may be contending that the Union has not established that information requested in the Union's March 28 letter is relevant and necessary to the Union's duty to bargain over the effects of the closing of the Dodge Ram frame line, I reject that contention.

The Respondent did not mention relevancy in its initial reply to the March 28, 2005 request. To the contrary its reply states that it would require additional time "so that adequate research and response can be provided" (GC Exh. 1(i) Exh. D). The first mention of relevancy is in Attorney Hooker's April 27 response to the March 28 request. Relevancy is one of three reasons offered by the Respondent for not including "any documentation regarding the original program agreement between [the Respondent] and Daimler-Chrysler Corporation regarding the DR 2002 program (GC Exh. 14 at 2)."

Schrauth responds with additional specificity, explaining that the request is for a list of the Respondent's claims for damages, which should include "Labor Cost and the dissolution of the Labor force at the Milwaukee facility (GC Exh.16)." Hooker replies, by letter dated May 2, that he believes that no such claim exists, but gives an assurance that if his information is inaccurate a supplement will be provided (GC Exh.17).

Union Attorney Robbins further supports the relevancy of the request in her May 3 letter insisting on the production of the settlement agreement. She states that "there are rumors flying around the Milwaukee facility" that the Respondent received compensation from DaimlerChrysler for employee severance (GC Exh. 18). Additionally, Schrauth testified that had the Union known that the rumor was fact, that knowledge would have strengthened the Union's bargaining position. It is not until June 14, after the Union filed the second unfair labor practice charge, that Hooker agrees to supply the additional information that was subject to the March 28 request. Notwithstanding "our continuing view it is irrelevant to your bargaining responsibilities" (GC Exh. 22). I disagree and I find that the Union has demonstrated the relevance of the

documents in items 4 and 5 of its March 28, 2005 request for information. Cf. *Sierra International Trucks, Inc.,* 319 NLRB 948, 950–951 (1995); *Transcript Newspapers,* 286 NLRB 124, 124 fn. 2, 126 (1987), enfd. 856 F.2d 409 (1st Cir. 1988) (finding sales agreements relevant to the union's performance as the collective-bargaining representative).

It appears that the Respondent's assertion of the confidential nature of the settlement agreement is premised solely on the fact that the parties agreed that the agreement was "strictly confidential" (GC Exh. 14 at 2). Assuming, without deciding, that such a bald assertion satisfies the Respondent's burden of proving a "legitimate and substantial confidentiality interest," the Respondent still has a duty to seek an accommodation. The confidentiality agreement, signed by the Union before receiving the documents referenced in the Respondent's April 27 response, might have sufficed as an accommodation. The Respondent made clear, however, that notwithstanding the signed confidentiality agreement, the "strictly confidential" settlement agreement would not be provided. It was not until after the filing of the second unfair labor practice charge that the Respondent stated its intention to "allow you to review the terms of the Settlement" (GC Exh. 22). Regardless, of the Respondent's expressed intention on April 27, a copy of the settlement agreement was not produced for the Union's review until June 23, shortly before the Dodge Ram line was closed in July. Thus, the Respondent procrastinated for almost 3 months before allowing the Union to review a document of primary importance to the Union in its role as the collective-bargaining representative.

The last two documents contained in General Counsel Exh. 31 indicate that the "final claim agreement" between the Respondent and DaimlerChrysler was agreed to on February 6 or March 17, 2004, well before the Union's information request of March 28, 2005. The Respondent offers no explanation why the Respondent's first claim submitted to DaimlerChrysler—a claim that included a 16.1 million dollar "Milwaukee Severance Cost" figure—was not included the Respondent's response of April 27. It certainly is contemplated within items 4 and 5 of the Union's March 28 request for "a complete list of claims for damages, including but not limited to items other than "unamortized capital" 9GC Exh. 1(i) Exh. C). Attorney Hooker's letter of May 2, to Schrauth indicates that a person or persons told him that no such claim exists, when he writes that "it is our information" (GC Exh. 17).

Hooker repeats the inaccurate statement in response to Robbins' letter relating her suspicions that the Respondent had not provided the Union with all the information contained in its March 28 request. Thus, he states that he has been assured by the Respondent's representatives that the material provided in the April 27 packet includes everything that the Respondent could find in their paper and electronic files related to the Respondent's claims against DaimlerChrysler over its re-sourcing decision. He also addresses Robbins' allegations concerning rumors that the Respondent received compensation from DaimlerChrysler for employee severance, by writing "we can assure you there is no truth to any of the rumors you reference." (GC Exh. 19.)

It is not until May 18 that Attorney Hooker finally learns the truth, and provides the Union with a four page "Claim Details" document, which was part of the Respondent's original claim that it presented to DaimlerChrysler (GC Exh. 21). It is evident that the Respondent's representatives were, at the very least, providing Attorney Hooker with inaccurate information. It is extremely troubling that it was only after repeated specific requests that the Respondent allegedly located its original "Claim Details" proposal. I find it simply beyond belief that the Respondent's initial proposal to DaimlerChrysler, claiming a total of 196.4 million dollars in damages, was somehow overlooked. It appears that this document is the only document, of the documents provided by the Respondent, that mentions "severance" let alone estimates a 16.1 million dollar cost for severance payments. My reluctance to attribute the failure to provide the

document to innocent oversight is further supported by the Respondent's assurance to Union Attorney Robbins that there was no truth to the rumors that the Respondent had received funds from DaimlerChrysler to pay severance to the employees. Certainly such a subtle hint would have refreshed even the most lapsed of memories. I find that the Respondent intentionally failed to include its original "Claims Details" proposal in response to the Union's March 28 information request. I also find that the Respondent made misrepresentations to the Union in an attempt to mislead the Union into believing that the requested information did not exist.

Based on the foregoing, I find that the Respondent failed to provide necessary and relevant information for bargaining to the Union in a timely manner, in violation of Section 8(a)(5) and (1) of the Act.

3. The alleged failure to bargain in good faith

Paragraph 15 of the complaint alleges that in addition to violating Section 8(a)(5) as described above, the Respondent also failed to bargain in good faith with the Union in violation of Section 8(a)(5) of the Act.

Section 8(d) of the Act requires "the employer to meet at reasonable times with the representative of its employees and confer in good faith with respect to wages, hours and other terms and conditions of employment. This obligation does not compel either party to agree to a proposal or to make a concession." Nonetheless, the Act is predicated on the notion that the parties must have a sincere desire to enter into "good faith negotiations with an intent to settle differences and arrive at an agreement." *NLRB v. Wonder State Mfg. Co.,* 344 F.2d 210, 215 (8th Cir. 1965). Therefore, "mere pretense at negotiation with a completely closed mind and without a sprit of cooperation does not satisfy the requirements of the Act." Id. A violation may be found where the employer will only reach an agreement on its own terms and none other. *Pease Co.,* 237 NLRB 1067, 1079 (1978).

In determining whether the Respondent bargained in bad faith, the Board looks to the "totality of the Respondent's conduct," both at and away from the bargaining table. Relevant factors include: delaying tactics, failure to designate an agent with sufficient bargaining authority, failure to provide relevant information, and unlawful conduct away from the bargaining table. See *Atlanta Hilton & Tower,* 271 NLRB 1600 (1974); *NLRB v. Arkansas Rice Growers Assn.,* 400 F.2d 565 (8th Cir. 1968); and *NLRB v. Stanislaus Implement & Hardware Co.,* 226 F.2d 377 (9th Cir. 1955).

On February 2, 2005, a day before the Acting Regional Director approved the settlement agreement in Case 30–CA–16981, Sue Danielson summoned Schrauth to her office and handed him a letter stating that the Respondent was willing to bargain over the effects of closing the Dodge Ram line. The letter also stated that although Danielson had previously told Schrauth "that we have been waiting to respond to you with regard to effects bargaining in the hope that we would receive authority to offer you severance monies," it was clear at this point that she had no such current authority. (GC Exh. 8.)

The first bargaining meeting over the effects of the loss of the Dodge Ram work occurred on February 21. The Union presented a nine paragraph proposal, seven of the paragraphs related to severance benefits. Danielson accepted the proposal and agreed to respond in writing. At the next meeting, on March 8, Danielson began responding verbally to the proposal. Schrauth insisted on a written response as promised. The meeting ended and

Danielson e-mailed the response to Schrauth on March 14. The Respondent accepted the non-severance items and rejected all the remaining items because there was "no severance money" (GC Exh. 10).

Schrauth replied on March 16, expressing disappointment with the Respondent's answer. He also reminded Danielson of the Respondent's recent commitment, contained in the Board's settlement agreement, to bargain in good faith. In closing he resubmitted the Union's proposal and indicated that he expected a good faith response by March 18 (GC Exh. 11). The record does not appear to contain any response to the letter. Schrauth testified that although Danielson continued to maintain that she was still not authorized to offer severance money, he continued to asked to meet to discuss effects bargaining (Tr.170).

Notwithstanding Schrauth's repeated requests the next meeting did not occur until May 25. Danielson was no longer employed by the Respondent. The Respondent's spokesperson was Charles Whaley, Danielson's supervisor and Respondent's director of human resources. Whaley was scheduled to leave the Respondent's employ within a few days. Schrauth resubmitted the Union's proposal. He testified that Whaley stated that he was not authorized to come to an agreement (Tr. 62). Whaley, although not employed by the Respondent, testified on its behalf. He testified that he could reach agreement with the Union but, like Danielson, he was not authorized to negotiate any severance money (Tr. 248). I credit Whaley's testimony on this matter. It is consistent with the documentary evidence and I believe Schrauth was confused by the Respondent's shift in position. As set forth more fully below, Whaley's testimony indicates that the Respondent had refused to bargain beginning with the Union's initial request. The Respondent did not change its position until Danielson's letter of February 2, 2005, stating that the Respondent was then willing to bargain over effects, but not severance. Thus, had the Union withdrawn its severance proposals, which were the only remaining open items in the proposal, Whaley could have accepted it.

In any case no progress was made at the May 25 meeting. The parties did not met again until June 16, with Attorney Hooker as the Respondent's spokesperson. Hooker presented, as a counterproposal, what in essence was Danielson's initial response to the Union's proposal of February 21. At the June 23 meeting the Respondent allowed the Union to review its settlement agreement with DaimlerChrysler. During the June 29 meeting, the last meeting before the Dodge Ram line was scheduled to close, the parties discussed previously requested information. On July 18, the Respondent announced that its last product line, the Ford Ranger line, would soon cease operation. The Union requested decisional and effects bargaining. During August 2–4 the Respondent, the Union, and all the other unions met to bargain over all outstanding issues. No progress was made and on August 9 Hooker announced that Dodge Ram effects bargaining would not be addressed until the decisional issues concerning the Ranger line had been resolved. On August 10, the Union submitted a revised proposal for severance, as well as a proposal for the settlement of pending grievances (R. Exh. 9). Once again, the Respondent submitted a counterproposal that tracks the Union's nonseverance language and rejects the proposed severance payments. That appears to have been the last communication between the parties, no agreement was reached, and the Dodge Ram manufacturing line was closed in July 2005.

a. *Analysis and conclusion*

Severance pay, as a form of wages, is a mandatory subject of bargaining. *Your Host, Inc.,* 315 NLRB 295 (1994). Implicit in a union's right to engage in effects bargaining is its right to bargain over severance pay. Although only one of several possible benefits over which a union might wish to bargain, when bargaining over the effects of a decision to

close, severance pay is of major importance. See generally *Los Angeles Soap Co.,* 300 NLRB 289, 295 (1990).

Whaley testified that unlike other effects bargaining that he conducted during his tenure with the Respondent, the Dodge Ram bargaining was unique in that he was not authorized to offer or accept any proposal regarding severance. Whaley, said that this limitation came from Susan Nutson, vice president of human resources, North America. Whaley had been talking to Nutson in an attempt to get her to allow him to more forward with effects bargaining. Nutson eventually permitted him to proceed, but only with the caveat that neither he nor any negotiator would offer or agree to severance pay proposals (Tr. 250–251).

The Respondent had told the Union that it was not doing well financially. The Union was also aware of rumors concerning a damage settlement with DaimlerChrysler. It would not be unreasonable for the Union, under such circumstances, to believe that the lack of authorization to bargain over severance could be a only a temporary situation. Instead of an outright refusal, the Respondent created an ambiguity in the minds of the negotiators. The ambiguity goes not so much to the limitation itself but to implication that it will eventually be lifted. Cf. *University of Bridgeport,* 229 NLRB 1074 (1977) (a negotiator's limitations must be disclosed). Thus, Danielson writes to Schrauth on February 8:

> I told you that we have been waiting to respond to you with regard to effects bargaining **in the hope that we would receive authority to offer you severance monies.** I also said that it was clear to us that we are not, **at this point**, going to have such authority on that specific issue. (GC Exh. 8, emphasis supplied.)

She closes by stating that there is "no **current** authority to offer severance monies." Although not dispositive of the issue, the ambiguity tends to impede the bargaining and is inconsistent with an intent to bargain in good faith.

I find Whaley's testimony also relevant in ascertaining the Respondent's intention. The quote below is from his testimony on direct examination. He is attempting to explain the delay in beginning effects bargaining, after giving several reasons he concludes:

> And with respect to this specific union [the charging party] . . . there wasn't a lot of sympathy with respect to severance . . . simply because there was knowledge that in the 2003 negotiations the company had in fact put on the table a severance offer which was subsequently rejected [by the Charging Party]. I can't attach a weight, but you have all those factors going on that were related to, no we don't need to sit down and start these discussions in 2004 when you have these other things up in the air. (Tr. 241.)

I view Whaley's candid testimony as more than an insight as to how the Respondent set priorities. I find his statement, when coupled with Nutson's directive, and Danielson's ambiguous posturing, evidence of the Respondent's intent to stymie any meaningful effects bargaining.

Aside from Whaley's minimal testimony about the May meeting, Schrauth provides the only evidence regarding the bargaining meetings. It appears that the meetings between the Respondent, the Charging Party, and all the other unions were chaotic. His testimony reflects this chaos and I find it of no probative value concerning those meetings.

It appears that even when bargaining finally got underway, on February 21, after the Union presented its initial proposal almost no bargaining occurred. Schrauth testified that each meeting lasted about an hour, and it does not appear that much, if anything happened between meetings. At the second meeting, on March 8, Danielson accepted the nonseverance pay items contained in the Union's proposal and rejected the rest stating "there is no severance pay" (GC Exh. 10). Indicative the pace of bargaining, it was not until March 14 that Danielson put the response in writing.

In spite of Schrauth's continuous requests for bargaining the next meeting did not occur until May 25. This was the first meeting after the Union received the damage claims proposal the Respondent had submitted to DaimlerChrysler, claiming over 16 million dollars in severance payments. Whaley had no response when asked about the document. Nor did he respond when asked who could give him authorization to bargain about severance. He did give the same response as Danielson when presented with the same union proposal.

The next bargaining meeting was held on June 16, with Attorney Hooker as the Respondent's spokesperson. He presented the Union's proposal as the Respondent's counterproposal and assured the Union that he would bring a copy of the final settlement agreement between the Respondent and DaimlerChrysler to the June 23 meeting. Thus, it was not until June 23, that the Union was permitted to review the final settlement agreement that it had requested on March 28. The agreement shows that the Respondent had received 89.2 million dollars in damages from DaimlerChrysler and that the agreement was finalized in January 2005. When asked how the total was calculated, Hooker responded that it "was just a final number that they put together." He also claimed, without further explanation, that the document was not provided sooner because DaimlerChrysler did not want the Union to see it. (Tr. 75–76). The final meeting occurred on June 29. This was the last meeting before the Dodge Ram line was closed and, except for the group meetings in August, the last face-to- face meeting between the parties. It was spent with the Union asking about information that it believed still had not been provided, and the Respondent giving assurances that all the information had been provided.

I find the long, unexplained delays between bargaining meetings; the failure to identify who was authorized to negotiate severance payments; the ambiguity created by its position on severance pay; the failure, especially in view of the damage award, to explain its intransigence on severance pay; and the failure to offer even one proposal of its own regarding effects bargaining, as additional evidence that the Respondent was only going through the motions, with no intention to achieve an agreement.

I find that the Respondent's conduct regarding the Union's March 28 information request, which in and of itself constitutes a failure to bargain in good faith, lends additional support for the conclusion that the Respondent was engaged in surface bargaining. See generally *Sea Jet Trucking Corp.,* 327 NLRB 540, 546 (1999), and cited cases. Not only was the Respondent dilatory in providing the requested information, but it provided false and misleading information. See S*ony Corp. of America,* 313 NLRB 420, 430 (1993) (finding that giving false and misleading statements in response to an information request violates Section 8(a)(5) of the Act).

I find that the Respondent's conduct, set forth above, as well as my previous finding that the Respondent failed to engage in good faith effects bargaining over the elimination of a G-444 position, are all part and parcel of the Respondent's refusal to bargain in good faith. Accordingly, based on the totality of the Respondent's conduct, I conclude that it has engaged

in surface bargaining—a mere pretense at negotiations—without any intention of reaching agreement. I find as alleged in the complaint that the Respondent has violated Section 8(a)(5) and (1) of the Act.

C. Revocation of the Settlement Agreement

I have found that the Respondent has failed to provide the Union with timely information for bargaining and has otherwise engaged in bad-faith bargaining subsequent to the approval of the settlement agreement. Indeed, the violations found are in direct contravention to the commitments the Respondent made in the settlement agreement—to provide information in a timely manner and to bargain in good faith. Accordingly, I find that the Acting Regional Director's determination that the settlement agreement be set aside was correct. It is therefore appropriate to consider the presettlement allegations of the complaint. *Jordan Graphics,* 295 NLRB 1085 fn.1 1092 (1989) (non-Board settlement properly set aside where employer committed postsettlement unfair labor practices).

D. Alleged Presettlement Violations

The complaint in Case 30–CA–16981 alleges that the Respondent from March 1, 2004 until August 19, unduly delayed and refused to furnish the Union with requested information that is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

The complaint also alleges that since late May 2004, and continuing, the Respondent has failed and refused to bargain in good faith with the Union over the effects of the cessation of Dodge Ram frame manufacturing in Milwaukee.

1. The 2004 information request

On February 13, 2004, the Union requested information in order to "evaluate the announcement [regarding the cessation of the Dodge Ram line] in terms of the parties' rights and responsibilities under our Collective Bargaining Agreement and [F]ederal law." The three page request sought information regarding the decision, the bid process, and information regarding Metalsa, the Respondent's joint venture partner located in Mexico, that was the recipient of the Dodge Ram work. (GC Exh. 1(i) Exh. A). The author of the letter was Duane McConville, the union president before Schrauth.

Although the request was sent to Danielson she sought Whaley's input. Because the request was "fairly voluminous" Whaley directed Danielson to make a partial response and indicate that more information would be forthcoming. Danielson responded on March 1, 2004. A fair reading of the response supports counsel for the General Counsel's contention that regarding most of the items requested, the Respondent claimed that it did not possess the information, or that the response was to be determined (TBD) (GC Exh. 1 (i) Exh. B).

Schrauth assumed the duties of union president on April 1. He credibly testified, without refutation, that he made inquiry of Danielson several times during May and June regarding the status of the remaining information. Her response was that the information was coming from headquarters in Novi, Michigan, and that she was working on it. Schrauth made a written request on August 5, almost 6 months after from the initial request.

On August 19, Danielson provided additional information on the bid process and the financial condition of the Milwaukee facility (GC Exh. 4). Significantly, the response contains no

explanation for its tardiness. Schrauth credibly testified that because much of the material was prepared before June 16, 2003, he asked Danielson, Plant Manager Garfield, and Attorney Hooker for an explanation for the delay, but none was given.

a. *Analysis and conclusion*

The February 13, 2004 information request establishes that the requested information is necessary and relevant to the Union's performance as the exclusive collective-bargaining representative of the unit. Although the Respondent did not challenge the relevancy of the information, or in any manner protest the request, it took almost 6 months to provide the information. When Schrauth queried Danielson about the length of time her only response was that the answers to the questions where coming from the Respondent's headquarters in Novi, Michigan.

"Absent evidence justifying an employer's delay in furnishing a union with relevant information, such a delay will constitute a violation of Section (8)(a)(5) inasmuch '[a]s the Union was entitled to the information at the time it made its initial request, [and] it was Respondent's duty to furnish it as promptly as possible.'" *Woodland Clinic,* 331 NLRB 735 (2000), quoting *Pennco, Inc.,* 212 NLRB 677, 678 (1974).

Danielson's abrupt reply to Schrauth is no justification for an almost 6 month delay in providing the information The Respondent submits various reasons why Danielson was unable to provide the information more expeditiously. The reasons proffered are based on Whaley's testimony. There is no evidence Danielson ever advanced those reasons, or that the reasons were given to the Union. Whaley's testimony sheds no light on why the Novi personnel did not respond sooner, which is the reason Danielson gave to Schrauth. Moreover, any reason advanced for the first time at the hearing would generally be of little probative value. Likewise the Respondent argues, for the first time, the relevancy of the request. Not only has the Respondent provided the information, but even if its argument was well founded, it is untimely.

For the foregoing reasons I conclude that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to timely furnish requested information that is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees.

2. The alleged failure to bargain in good faith

In February 2004, the Respondent announced that in July 2005 it would no longer manufacture Dodge Ram truck frames for DaimlerChrysler at the Milwaukee facility. Union President Schrauth credibly testified that on several occasions before June 21 he asked Plant Manager Garfield, and Sue Danielson, if the Respondent was prepared to begin bargaining over effects. They responded that they were not authorized to enter into effects bargaining at that time. On June 21, Schrauth memorialized his request in an e-mail to Danielson (GC Exh. 2). Although he did not receive a specific response to his e-mail Schrauth continued to request effects bargaining, and Danielson continued to reply that she was not currently authorized to enter into effects bargaining. Danielson acknowledges as much in her August 19 letter when she writes: "We are aware of your request for effects bargaining and will contact you when the company is ready to discuss" (GC Exh. 4 at 2).

Schrauth specifically testified about a regularly scheduled meeting with Garfield and representatives of all the plant unions on July 22. At that meeting Schrauth again

requested effects bargaining and Garfield again responded that he was "not at this time authorized to enter any effects bargaining." This time Schrauth asked who was authorized, and would they come to Milwaukee for the negotiations. Garfield said that he would ask the Respondent's CEO but he could not guarantee that they would come. The record contains no evidence that any action was taken by the Respondent based on this conversation. Nor was effects bargaining scheduled, despite Schrauth's continued verbal requests of Danielson and Garfield.

The Union filed the charge in Case 30–CA–16981 on August 31, 2004. The charge alleges that the Respondent failed to bargain over effects. The settlement agreement that the Acting Regional Director signed on February 3, 2005, was approved by the parties in December 2004. The settlement agreement provides that the Respondent would "on request, bargain collectively and in good faith with the Union concerning the effects of any decision to stop manufacturing Dodge Ram frames in Milwaukee." On February 2, the day before the Acting Regional Director approved the agreement, and the day that the Respondent sought Chapter 11 bankruptcy protection, Danielson notified Schrauth that the Respondent was willing to bargain over the effects of the Dodge Ram cessation. She did so with, the caveat that the Respondent "has no current authority to offer severance monies in any effects agreement"(GC Exh. 8).

a. *Analysis and conclusion*

The complaint alleges that the Respondent has failed and refused to bargain in good faith over the effects from late May 2004, and continuing. The settlement was approved by the Acting Regional Director on Feb 3, 2005. Whaley admitted that he knew that the Respondent could meet and respond to the Union's request for bargaining without reference to the settle agreement.

The Respondent has a duty to bargain with the Union over the effects of the cessation of the Dodge Ram line on unit employees "in a meaningful manner and at a meaningful time." *First National Maintenance Corp. v. NLRB,* 452 U.S. 666, 681–682 (1981). "A meaningful time" has been construed as a time before the cessation of operations unless emergency circumstances prevent advance notice to the union of the planned closure and providing an opportunity to the union to seek and engage in effects bargaining. *Los Angeles Soap Co.,* 300 NLRB 289 (1991); *Raskin Packing Co.,* 246 NLRB 78 (1979).

If the union is given timely notice of the decision, then the union must request bargaining about the effects of the decision. E.g., *Jim Waters Resources,* 289 NLRB 1441 (1988). Here there is no issue of the timeliness of the notice or that the Union requested bargaining. Instead, the Respondent argues that because the Union had a meaningful opportunity to bargain at all times during 2005, the Respondent's decision not to bargain in 2004 did not violate the Act.

The Respondent offers the following reasons in support of its contention: negotiations begun over a year in advance of the cessation would not have been more meaningful, the Union would not have faired any better in its quest for severance moneys, the Union represented the same complement of employees in 2005 as it did in 2004, the Respondent's bankruptcy filing in February 2005 did nothing to make the subsequent effects bargaining "less meaningful."

As set forth above I have found that the Respondent bargained in bad faith in 2005, and thus prevented the Union from having a meaningful opportunity to bargain over the effects. Even without that finding the Respondent's reasons are, for the most part, speculative Moreover, when considered separately or cumulatively, they do not justify delaying bargaining for over 8 months from the request.

The duty to bargain arises upon request. Once a request is made Section 8(d) of the Act requires the parties to "meet at reasonable times and confer" for such purposes as "the negotiation of an agreement." The language adopted by the Board in *Fruehauf Trailer Services,* 335 NLRB 390, 403 (2001), addressing the employers bargaining obligations is especially appropriate:

> The Board has long construed these obligations as imposing on the employer an "affirmative duty to make expeditious and prompt arrangements, within reason, for meeting and conferring." Indeed, using language that is especially pertinent to ultimate issues in this case, the Board has held that an employer is required to show the same "great degree of diligence and promptness in the discharge of [its] bargaining obligations as [it] display[s] in other business affairs of importance," for "[a]greement is stifled at its source if opportunity is not accorded for discussion, or so delayed as to invite or prolong unrest or suspicion." (footnotes omitted).

The fact that the Respondent was required to bargain over effects does not change its basic bargaining obligations.

The Respondent's contention that "[t]he Act requires only that [effects bargaining] occur at a 'meaningful time'–*e.g.*, where the Union maintains 'some measure of bargaining power,'" is misplaced. The cases relied on by the Respondent address the need for an employer to give "timely notice" before closing, thus allowing the Union to retain some measure of bargaining power. See e.g. *Metropolitan Teletronics Corp.,* 279 NLRB 957, 959 (1986) ("An element of 'meaningful' bargaining is timely notice to the union"). Thus, in *Komatsu America Corp.,* 342 NLRB No. 62 (2004), cited by the Respondent, the facts reflect that the announcement was made on January 25, 2002, and effects bargaining ensued, at the request of the union, on March 6, 2002. Giving timely notice does not in any way allow the employer to abrogate its obligation under the Act to meet at reasonable times.

Based on the foregoing I find as alleged, that since late May 2004, and continuing, the Respondent has failed and refused to bargain in good faith with the Union over the effects of the cessation of Dodge Ram frame manufacturing in Milwaukee, thereby violating Section 8(a)(1) and (5) of the Act.

I have found that the Respondent has committed substantial pre and postsettlement unfair labor practices. The presettlement violations include refusing to bargain in good faith and failure to provide the Union with information in a timely manner. The substantial postsettlement unfair labor practices are identical to the allegations which had been settled and to which the Respondent agreed it would not commit. The postsettlement violations are not isolated. The settlement agreement was approved by the Acting Regional Director on February 3, 2005, on February 21 the Respondent commenced surface bargaining, on April 7 it continued to delay the production of relevant and necessary information to the Union, as well as providing false and misleading information to the Union. I find the Respondent's pre and postsettlement conduct part and parcel of a pattern of conduct designed to prevent bargaining in good faith with

the Union over the effects of the closing of the Dodge Ram manufacturing line and the elimination of a G-444 position.

CONCLUSIONS OF LAW

1. The Respondent, Tower Automotive Products Company, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Smith Steel Workers, directly affiliated Local Union 19806, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. By the following conduct, the Respondent has engaged in unfair labor practices affecting commence within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act: (1) failing to timely comply with the Union's request for information from March 1 until August 19, 2004, and from April 7 until June 23, 2005; (2) failing to bargain with the Union over the effects of the closing of the Dodge Ram manufacturing line, and (3) failing to bargain with the Union over the effects of the elimination of a G-444 semidriver position.

4. The Respondent has not otherwise violated the Act as alleged in the consolidated complaint.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Counsel for the General Counsel and counsel for the Charging Party contend that the remedy provided in *Transmarine Navigation Corp.,* 170 NLRB 389 (1986), as clarified in *Melody Toyota,* 325 NLRB 846 (1998), is warranted. The *Transmarine* remedy is the traditional remedy when an employer fails to lawfully engage in effects bargaining.

I find the Respondent's argument that a *Transmarine* remedy is inappropriate to be unpersuasive, and the cases relied on distinguishable. *Snow Industries,* 326 NLRB 910, 913 (1998), is readily distinguishable—no violation was found, hence no remedy was required. Similarly, in *Fresno Bee,* 339 NLRB 1214, 1216 (2003), the Board specifically found a *Transmarine* remedy was unnecessary because there was no lost work opportunity and no basis to conclude there was an equivalent loss of bargaining strength. Here, it is undisputed that both lost work opportunities and layoffs occurred (Tr.103). Accordingly, there is a basis on which to conclude that a loss of bargaining strength occurred, and I make that conclusion. Moreover, the Respondent appears to acknowledge that fact, at least inferentially, when it argues that during the negotiations (where I have found that the Respondent engaged in bad faith bargaining), "the Union represented a full complement of employees at the Milwaukee plant" (R. Br. 38, which I read as an admission that a "full complement" no longer exists). Lastly, I disagree with the Respondent's contention that a *Transmarine* remedy is an attempt to confer benefits on the Union that it was unable to obtain through negotiations. As previously stated, the Respondent did not lawfully negotiate—it violated the Act by engaging in bad faith bargaining. The *Transmarine* remedy is "designed both to make whole the employees for losses suffered as a result of the violation and to recreate in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent." *Transmarine*, supra at 390. The courts have similarly recognized that the primary purpose of the T*ransmarine* remedy is "to create an incentive for the

Company to bargain in good faith." *Nathan Yorke v. NLRB,* 709 F.2d 1138, 1145 (7th Cir. 1983).

Thus, as a result of the Respondent's unlawful failure to bargain in good faith with the Union about the effects of closing the Dodge Ram manufacturing line, and the elimination of a G-444 semidriver position, the affected unit employees have been denied an opportunity to bargain through their collective-bargaining representative. Meaningful bargaining cannot be assured until some measure of economic strength is restored to the Union. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practices committed.

Accordingly, it is necessary, in order to effectuate the purposes of the Act, to require the Respondent to bargain with the Union concerning the effects on unit employees of the closing of the Dodge Ram manufacturing line, and the elimination of a G-444 semidriver position. A limited backpay requirement shall accompany this order, designed to make whole the employees for losses suffered as a result of the violations, and to recreate in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent. I shall do so by ordering the Respondent to pay backpay to the affected employees in a manner similar to that required in *Transmarine Navigation Corp.,* 170 NLRB 389 (1986). Thus, the Respondent shall pay its affected unit employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects on unit employees of the closing of the Dodge Ram manufacturing line, and the elimination of a G-444 semidriver position; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 business days after receipt of this Decision and Order, or to commence negotiations within 5 business days after receipt of the Respondent's notice of its desire to bargain with the Union, *Melody Toyota,* 325 NLRB 846 (1998); (4) the Union's subsequent failure to bargain in good faith, but in no event shall the sum paid to these employees exceed the amount they would have earned as wages from the date on which the Dodge Ram manufacturing line closed in July 2005, or the G-444 semidriver position was eliminated on February 28, 2005, whichever is applicable, to the time they secured equivalent employment elsewhere, or the date on which the Respondent offers to bargain in good faith, whichever occurs sooner, provided, however, that in no event shall this sum be less than the employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Backpay shall be based on earnings which the affected employees would normally have received during the applicable period, less any net interim earnings, and shall be computed in accordance with *F. W. Woolworth Co.,* 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded,* 283 NLRB 1173 (1987).

In addition counsel for the General Counsel requests that in the event of the plant closing that the notice be mailed to all employees employed on the date of the announcement that the Dodge Ram manufacturing line would close. I agree. Moreover, in view of the fact that the Respondent closed the Dodge Ram manufacturing line in July 2005, and that it eliminated a G-444 semidriver position on February 28, 2005, I shall order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of its former unit employees who were laid off as direct result of the closing of Dodge Ram manufacturing line in July 2005, and the elimination of a G-444 semi driver position on February 28, 2005, in order to inform them of the outcome of this proceeding. No affirmative remedy is necessary for the Respondent’s unlawful failure to timely provide the Union with the requested information because I find that the record establishes that the Respondent ultimately supplied the information. A finding with which the General Counsel apparently does not disagree (GC Br. 18–20).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[1]

ORDER

The Respondent, Tower Automotive Products Company, Inc., Milwaukee, Wisconsin, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing to timely furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of unit employees.

(b) Failing to bargain with the Union regarding the effects of the closing of the Dodge Ram manufacturing line.

(c) Failing to bargain with the Union over the effects of the elimination of a G-444 semi-driver position.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit concerning the effects of the closing of the Dodge Ram manufacturing line, and the elimination of a G-444 semidriver position, and, if an understanding is reached, embody the understanding in a signed agreement:

> All production, maintenance, and office employees, including foremen helpers, but excluding all employees working in the general administrative offices of the Corporation [Respondent], all employees working in the Personnel Departments, senior and junior buyers, senior and junior accountants, purchase follow-up, chief telephone switchboard operator, division managers and their secretaries, salesmen, sales service specialists, sales trainees, foremen and supervisors as defined in the Act, and excluding all employees under the jurisdiction of the following bargaining units: Cafeteria Workers; Local 150 Service Employees International Union AFL–CIO, CLC; United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local Union 601; International Brotherhood of Electrical Workers, Local Number 663; Technical Engineers Association; Milwaukee and Southern Wisconsin District Council of Carpenters, AFL–CIO; and International Association of Machinists and Aerospace Workers, District No.10.

(b) Pay backpay to unit employees terminated in July 2005 as a result of the Respondent's closure of its Dodge Ram manufacturing line, and pay backpay to unit employees

[1] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

terminated on February 28, 2005, as the result of the Respondent's elimination of a G-444 semi-driver position, in the manner set forth in the remedy section of this decision.

(c) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its facility in Milwaukee, Wisconsin, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 30, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 10, 2004, the date of the announcement that the Dodge Ram manufacturing line would close.

(e) Within 14 days after service by the Region, duplicate and mail, at its own expense and after being signed by the Respondent's authorized representative, signed and dated copies of the attached notice marked "Appendix" to the Union and to all former unit employees who were laid off as a direct result of the closing of the Dodge Ram manufacturing line in July 2005, and the elimination of a G-444 semidriver position on February 28, 2005.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

(g) IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C., February 10, 2006

_____
John T. Clark
Administrative Law Judge

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT fail to timely furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of unit employees.

WE WILL NOT fail to bargain with the Union over the effects of the elimination of the a G-444 semidriver position.

WE WILL NOT fail to bargain with the Union regarding the effects of the closing of the Dodge Ram manufacturing line.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL bargain, on request, with the Union concerning the effects on unit employees of our decision to close the Dodge Ram manufacturing line, and to eliminate a G-444 semidriver position and, if an understanding is reached, embody the understanding in a signed agreement.

WE WILL pay limited backpay to all unit employees terminated in July 2005 as a result of our decision to close the Dodge Ram manufacturing line, and WE WILL pay limited backpay to all unit employees terminated as a result of our elimination of a G-444 semidriver position on February 28, 2005.

TOWER AUTOMOTIVE PRODUCTS COMPANY, INC.

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it

investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

310 West Wisconsin Avenue, Federal Plaza, Suite 700
Milwaukee, Wisconsin 53203-2211
Hours: 8 a.m. to 4:30 p.m.
414-297-3861.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 414-297-1819.